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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3710 OF 2006

A.G. Ghuge .. Petitioner

Vs.

Union of India and Ors. .. Respondents

Mr. K. Babu Rajan for Petitioner.

Mr. Ravi Shetty and Ms. Anamica Malhotra for
Respondents.

CORAM: F.I. REBELLO &
R.V. MORE, JJ.

DATED: JANUARY 09, 2007

P.C.:

. Rule. Heard forthwith.

. The Petitioner was appointed as U.D.C. in the year 1985 and thereafter posted as Tax Assistant on 27.7.1989. He was promoted as DOS L-II in the year 1994 and according to Respondent No. 1 now he has been promoted to the post of DOS L-I. According to Petitioner he is still holding the post of DOS L-II and has not been promoted to the post of DOS L-I.

. By the present petition, the Petitioners are praying that he be promoted to the post of Tax Inspector and the action of the respondents in rejecting his application for consideration is without the authority of law. It is the case of the

Petitioners that he was directly recruited against the post of U.D.C. under the physically handicapped category. The Petitioners relies on various O.M.s and more specifically O.M. dated 26.7.2005 whereby the Under Secretary, Government of India informed various authorities including the authorities where the Petitioner is working to withdraw the instructions contained in Board's Letter dated 16.8.1992. By the said letter of 16.8.1992 as referred to in the letter dated 26.7.2005, it was laid down that once an officer accepts promotion to the grade of DOS L-II and is confirmed in the grade, he cannot be reverted to a lower grade nor he can be considered in future for promotion to the executive grade. The Petitioner relying on this notification, approached the respondents to contend that he should be promoted as Inspector. He was informed by the communication of 6.2.2006 that as the Petitioner was working as DOS L-II which was not a feeder post, he cannot be considered for promotion of the grade of Inspector. This is the subject matter of the present petition.

. On behalf of the Respondents, their learned counsel places before us the recruitment rules framed under Article 309 of the Constitution of India. In terms of those rules as of the year 1979, there were posts of the Inspector Senior Grade in

the pay scale of 550-900 and Inspector (ordinary grade) in the pay scale of Rs.425-800/-. The learned counsel for the respondents points out to us that in the year 1986, both these posts have been amalgamated and the feeder post for promotion is U.D.C. Similarly there are posts of DOS L-II in the pay scale of Rs.550-750 which had to be filled in by promotion from the persons holding the post of DOS L-II. . The post of DOS L-II carries the pay scale of RS.425-700 and promotion to that post was from the post of U.D.C. and stenographers. In other words, U.D.C.s had two avenues of promotion one to the post of Inspector and other to the post of DOS L-II. The Petitioner was promoted to the post of DOS L-II in the year 1994. The next promotional avenue for DOS L-II is to the post of DOS L-I. There is no avenue of promotion for the person holding the post of DOS L-II to the post of Inspector.

. The only question that remains for consideration is whether in view of the letter dated 26.7.2005, the Petitioner can be considered for the post of Inspector. As pointed out earlier, the pay scale in terms of the 1979 rules of the Inspector Ordinary Grade was Rs.425-800 whereas that of DOS L-II was 425-700. The Promotion of the Petitioner as DOS L-II was effected in the year 1994. The first

representation made by the Petitioner is in the year 2003 i.e. long since after the Petitioner was promoted in the year 1994.

. There are subsequent notifications pursuant to the coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights, Etc) Act, 1995 and rules framed thereunder. We are really not concerned with these rules as they came into force in the year 1996 whereas the Petitioner was promoted in the year 1994.

. In the light of the above, we are clearly of the opinion that apart from the fact that there is long delay of nearly 14 years to approach the court, the post held by the Petitioner is not a feeder post to the post of Inspector and consequently the Petition as filed has to be dismissed.

. In the light of that rule discharged. No order as to costs.

(R.V. MORE, J.)

(F.I. REBELLO, J.)